The Greek Supreme Court has decided: Relatives of persons killed in accidents are immediate victims

A groundbreaking judgment was rendered last October by the Greek Supreme Court. Relatives of two Greek crew members killed in Los Llanos Air Base, Spain, initiated proceedings before Athens courts for pain and suffering damages (solatium). Although the action was dismissed by the Athens court of first instance, and the latter decision was confirmed by the Athens court of appeal, the cassation was successful: The Supreme Court held that both the Brussels I bis Regulation and the Lugano Convention are establishing international jurisdiction in the country where the relatives of persons killed are domiciled, because they must be considered as direct victims.

THE FACTS

On 26 January 2015, an F-16D Fighting Falcon jet fighter of the Hellenic Air Force crashed into the flight line at Los Llanos Air Base in Albacete, Spain, killing 11 people: the two crew members and nine on the ground.

The relatives of the Greek crew members filed actions for pain and suffering damages before the Athens court of first instance against a US (manufacturer of the aircraft) and a Swiss (subsidiary of the manufacturer) company. The action was dismissed in 2019 for lack of international jurisdiction. The appeals lodged by the relatives before had the same luck: the Athens court of appeal confirmed in 2020 the first instance ruling. The relatives filed a cassation, which led to the judgment nr. 1658/5.10.2022 of the Supreme Court.

THE JUDGMENT OF THE SUPREME COURT

Out of a number of cassation grounds, the Supreme Court prioritized the examination of the ground referring to the international jurisdiction deriving from

Articles 7(2) Brussels I bis Regulation and 5(3) Lugano Convention 2007. Whereas the analysis of the court was initially following the usual path, established by the CJEU and pertinent legal scholarship, namely, that third persons suffering moral (immaterial) damages are classified as indirect victims of torts committed against their relative, when the accident results in the death of the relative, they have to be considered as direct victims, which leads to their right to file a claim for damages (solatium) in the courts of their domicile.

In particular, the analysis of the Supreme Court is the following:

1. Articles 7(2) Brussels I bis Regulation and 5(3) Lugano Convention 2007

'With regard to the mental suffering caused by the incident as a result of the tort, after his death, the relative can no longer be subject to rights (and obligations) and, therefore, have claims against the wrongdoer.

In this case, the relatives of the deceased have by law a personal claim against the defendants, since the infliction of mental suffering is a primary and direct damage to their person; therefore, the place of its occurrence is important for the establishment of the court's international jurisdiction in the court which this place is located, for the adjudication of their respective claim.

In other words, the infliction of mental suffering is a direct injury to the persons close to the deceased; it is separate and independent from the primary injury suffered by the latter, without this mental suffering being considered, due to the previous injury of the deceased, as indirect damage. The wrongdoer's behavior, considered independently, also constitutes an independent reason for an obligation towards them for monetary satisfaction (and compensation), without the mental suffering caused presupposing any other damage to the above persons, so that it could be characterized as a consequence of it, and, consequently , as indirect with respect to this damage.

The place where the mental suffering comes from is not the place, where by chance the person was informed of the death of his relative and felt the mental pain, but the place of his main residence, where he mainly and permanently suffers this pain, which certainly has a duration of time and, therefore, burdens him not all at once, but for a long, as a rule, period of time.

It should be noted that, according to Greek law, in the case of tortious acts, a

claim for compensation and monetary satisfaction due to moral damage is only available to the person immediately harmed by the act or omission, and not by the third party indirectly injured. Hence, where Article 932 of the Civil Code states that, in the event of the death of a person, monetary compensation may be awarded to the victim's family due to mental distress, it clearly considers the relatives of the deceased as immediately damaged and, in any case, fully equates them with their primary affected relative.

In view of the above, articles 7(2) of Regulation 1215/2012 and 5(3) of the Lugano Convention, have the meaning that the mental suffering, which is connected to the death of a person as a result of a tort committed in a member state, and which is suffered by the relatives of this victim, who reside in another member state, constitutes direct damage in the place of their main residence. Therefore, the court, in whose district the person, who suffered mental anguish due to the death of his relative, has his residence, has territorial competence and international jurisdiction to adjudicate the claim arising from the mental suffering caused for the payment of damages.

The above conclusion also results from the grammatical interpretation of the above provisions, given that they do not make any distinction as to whether the damage concerns the primary sufferer or other persons, but only require that the damage caused to the plaintiff may be characterized as direct.

An opposite opinion would necessarily lead in this case to the international jurisdiction only of the court of the place where the damaging event occurred, a solution, however, that is not in accordance with the interpretation of the above rules by the CJEU, which accepts, without distinction or limitation, equally and simultaneously, the international jurisdiction of the place where the direct damage occurred.

2. The interdependence of Brussels I bis Regulation and Rome II Regulation

It is true that in the interpretation of Article 4(1) Regulation 864/2007 on the law applicable to non-contractual obligations, the CJEU ruled that, damages connected with the death of a person due to such an accident within the Member State of the trial court, suffered by the victim's relatives residing in another Member State, must be characterized as "indirect results" of the said accident,

under the meaning of the provision in question (case Florin Lazar v Allianz SpA, C-350/14).

However, in addition to the fact that this judgment concerned the choice of applicable law, the same court has accepted that, according to recital 7 Regulation 864/2007, the intention of the EU legislator was to ensure consistency between Regulation 44/2001 (already 1215/2012), and the material scope as well as the provisions of Regulation 864/2007; however, "it does not follow in any way that the provisions of Regulation 44/2001 must, for this reason, be interpreted in the light of the provisions of Regulation 864/2007. In no case can the intended consequence result in an interpretation of the provisions of Regulation 44/2001, inconsistent with the system and its purposes.

And the Supreme Court concluded:

According to all of the above, pursuant to the provision of article 35 of the Civil Code, as interpreted in the light of articles 7(2) Regulation 1215/2012 and 5(3) Lugano Convention, the Greek courts have international and local jurisdiction to adjudicate claims for payment of reasonable monetary satisfaction due to mental anguish, as a result of the death of a relative of the claimants, committed in another Member State, if the claimants reside in the court's district.

THE MINORITY OPINION

One member of the Supreme Court distanced himself from the panel, and submitted a minority opinion, which was founded on the prevailing opinion followed by the CJEU and legal scholarship. In particular, according to the minority report, the damage caused to the claimants due to the death of their relative remains an indirect one, given that the damage caused was of a reflective and not of a direct nature. The minority opinion emphasized also on the predictability factor, which was not elaborated by the panel.

COMMENTS

The judgment of the Supreme Court opens the Pandora's box in a matter well settled so far. An earlier judgment rendered by the Italian Supreme Court

followed the prevailing view [*see Corte di Cassazione (IT) 11.02.2003 – 2060 – Staltari e altre ./. GAN IA Compagnie française SA ed altri*, available in: unalex Case law Case IT-19].

In matters where national courts wish to deviate from the prevalent, if not unanimous view taken by the CJEU and European legal scholarship, the most prudent solution would be to address the matter to the Court, by filing a request for a preliminary ruling. The latter applies to both international jurisdiction, and interdependence between the Brussels I bis and the Rome II Regulation.